

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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LAWRENCE L. SIMMONS,

Plaintiff,

v.

Case No. 4:05-CV-16

Hon. Richard Alan Enslen

DR. SHERRI Z. HELLER, ROLAND  
C. FANCHER, DAVID KOREN,  
FRIEND OF THE COURT, and  
UNITED STATES DEPARTMENT  
OF HEALTH & HUMAN SERVICES,  
OFFICE OF CHILD SUPPORT  
ENFORCEMENT - ADMINISTRATION  
OF CHILDREN & FAMILIES,

Defendants.

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**ORDER**

By Judgment of March 31, 2005, this Court dismissed Plaintiff Lawrence L. Simmons' *pro se* Complaint and Amended Complaint after he failed to sufficiently show cause why his action should not have been dismissed for failure to state a claim. He has since moved for reconsideration pursuant to Western District of Michigan Local Civil Rule 7.4(a) and Federal Rule of Civil Procedure 60(b)(4).

Pursuant to Western District of Michigan Local Civil Rule 7.4(a), reconsideration is appropriate only when the movant "demonstrate[s] a palpable defect by which the Court and the parties have been mislead [sic] . . . [and] that a different disposition must result from the correction thereof." Rule 60(b)(4) permits the district courts to set aside void judgments. However, void judgments refer only to those ordered in the total absence of jurisdiction or made in a manner

inconsistent with due process of law. *Antoine v. Atlas Turner, Inc.*, 66 F.3d 105, 108 (6th Cir. 1995) (quoting *In re Edwards*, 962 F.2d 641, 644 (7th Cir. 1992)).

In this case, Plaintiff's argument is that the legal procedures under Rule 12 do not permit a *sua sponte* dismissal and, therefore, the Judgment is defective and void. This argument fails to appreciate *Tingler v. Marshall*, 716 F.2d 1109, 1112 (6th Cir. 1983) and other Sixth Circuit cases which permit *sua sponte* dismissals provided that the party affected be first given the opportunity to amend and show cause why the action should not be dismissed. This Court's Order to Show Cause furnished Plaintiff with his *Tingler* rights and there has been no due process violation which would render the Judgment void. See *Johnson v. Frederick & Lewis Timber & Equip. Co.*, 181 F.3d 101, 1999 WL 313876, \*\*2 (6th Cir. May 5, 1999).

**THEREFORE, IT IS HEREBY ORDERED** that Plaintiff Lawrence L. Simmons' Motion for Reconsideration (Dkt. No. 10) is **DENIED**.

DATED in Kalamazoo, MI:  
May 17, 2005

/s/ Richard Alan Enslen  
RICHARD ALAN ENSLEN  
UNITED STATES DISTRICT JUDGE